



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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October 21, 2022

Julian Miranda
City Manager
City of Irwindale
5050 N. Irwindale Ave.
Irwindale, CA 91706.

Re: Your Request for Informal Assistance
Our File No. I-22-095

Dear Mr. Miranda:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ Because your question seeks general guidance and is not limited to a specific governmental decision, we are treating your request as one for informal assistance.² Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090. Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

Does the Act prohibit you as the Executive Director of the Irwindale Housing Authority from taking part in Housing Authority decisions regarding the future development of a vacant 10-acre parcel of land located approximately 958 feet from your residence?

CONCLUSION

The determination as to whether you may take part in such decisions is a fact-specific inquiry made on a decision-by-decision basis. Generally, you may only take part in decisions concerning the 10-acre parcel of land to the extent those decisions will not have a reasonably foreseeable, material financial effect on your real property interest, as explained below. However,

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

without identifying the nature of the decision, we are unable to determine whether you are disqualified from any particular decision regarding the 10-acre parcel.

FACTS AS PRESENTED BY REQUESTER

You are the City Manager for the City of Irwindale and serve as the Executive Director of the Irwindale Housing Authority. Your residence is located between approximately 958 feet from a vacant 10-acre parcel of land (“Property”) located at 5100 Allen Drive within the City of Irwindale, owned by the Irwindale Housing Authority. Your residence is separated from the Property by approximately 2 blocks of residential properties, City facilities, the Irwindale Park, and other property zoned A-1 Agricultural. The residence does not have a view of or direct street access to the Property.

The Housing Authority Board will be discussing the future development of the Property in the coming months and years. Currently, there are no actual projects for the Property, but the City Council had a discussion about the Property being designated for housing and to identify it within the City’s housing element. You did not take part in that discussion. Next year, the City Council/Housing Authority will have housing meetings to discuss the nature of a future housing development which is expected to take place on the Property.

ANALYSIS

The Act’s conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).) Section 87100 prohibits a public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. Section 87103 provides that a public official has a “financial interest” in a decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official’s interests that is distinguishable from the decision’s effect on the public generally.

Section 87103 also describes the interests from which a conflict of interest may arise under the Act. As pertinent to the facts presented and the decision at issue, an official has a potentially disqualifying conflict if the decision will have a reasonably foreseeable and material financial effect on an interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b).) Accordingly, we must analyze the potential financial effect of the decisions at issue on your interest your residential property.

Foreseeability and Materiality

Where, as here, the financial interest is not explicitly involved in a decision, the financial effect is reasonably foreseeable if it can be recognized as a realistic possibility, more than hypothetical or theoretical. (Regulation 18701(b).) Therefore, you will have a financial interest in the relevant decisions if there is a realistic possibility the decisions will have a material financial effect on your real property interest.

Your residence is located 958 feet from the Property at issue. Regulation 18702.2(a)(8), regarding real property within 500 to 1,000 feet from the property involved in a decision, is the applicable standard. Under Regulation 18702.2(a)(8), a decision's effect on an official's real property interest is material if the decision would change the parcel's market value, development potential, income producing potential, highest and best use, or character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality.

Your facts state that the project has not yet been fully identified but consists of the development of a currently vacant 10-acre parcel of property. Note that we have advised on multiple occasions that the Act's conflict of interest provisions prohibit an official from taking part in decisions relating to a proposed large residential development project located on undeveloped real property between 500 and 1,000 feet from the official's residence because it is reasonably foreseeable that those decisions would have a material financial effect on the market value of the official's real property interest in a residence.³ However, whether the Act prohibits an official from taking part in a governmental decision based on a conflict of interest is a fact-specific inquiry made on a decision-by-decision basis.

Accordingly, we can only advise that you may take part in governmental decisions concerning the Property only to the extent those decisions will not have a reasonably foreseeable, material impact on your real property interest (or any other economic interest you may have). However, considering the fact that the project consists of the development of a large tract of currently vacant land, we must caution that you may be prohibited from taking part in the decision and you should seek additional advice once the specifics of the project can be identified.

Potential Segmentation

We note that under certain circumstances, a public official disqualified from one decision may participate in other related decisions if the official's participation does not affect the decision in which he or she has a conflict of interest. (Regulation 18706.) The Commission has consistently advised that an official may segment a decision in which the official has a conflict of interest from other decisions in which they do not have a conflict of interest to allow participation by the official in one or several related decisions if the decisions are not too interrelated to be considered separately.

The Commission has advised that some decisions may be too interrelated and may not be considered separately, such as when resolution of one decision will effectively determine, affirm, nullify or alter the result of the other decision. (Regulation 18706(b).) Segmentation may only apply

³ *Roberto* Advice Letter, No. A-21-043 [city manager prohibited from taking part in decisions concerning a proposed 130-unit residential development project located on 16 acres of vacant land about 600 feet from her residence based on its potential to protect or increase the market value of neighboring properties]; *Wisinski* Advice Letter, No. A-20-085 [councilmember disqualified from decisions relating to proposed residential project consisting of 510 units on undeveloped real property located 703 feet from councilmember's residential real property interest]; *Minner* Advice Letter, No. A-20-072 [councilmember disqualified from decisions relating to proposed mixed-use project including up to 620 residential units on largely vacant real property located 939 feet from councilmember's residential real property interest]; see also *Chopra* Advice Letter, No. A-18-098 [reasonably foreseeable that construction of 118 new residential dwellings on land utilized as a public park located about 930 feet from residences of two City of Mountain View councilmembers would have a material financial effect on the market value of their homes].

if the decisions can be broken down into separate decisions that are not inextricably interrelated to the decisions in which you have a disqualifying conflict of interest.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

By: *Jack Woodside*
Jack Woodside
Senior Counsel, Legal Division

JW:aja